IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

FRIDAY, THE 2ND NOVEMBER 2007 / 11TH KARTHIKA 1929

OP.No. 20549 of 2002(V)

PETITIONERS:

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1. V.UNNUNNI, S/O. VARGHESE XXIX/406,
KIZHAVANA, KADAVANTHRA, ELAMKULAM VILLAGE.

2. ANTONY K.J. S/O. LATE K.V.JOSEPH,
KIZHAVANA, KADAVANTHRA, ELAMKULAM VILLAGE,
KOCHI-20

3. PETER K.J. S/O. LATE K.V.JOSEPH,
KIZHAVANA, KADAVANTHARA, ELAMKULAM VILLAGE
KOCHI-20.

4. PETER GEORGE S/O. LATE K.V.JOSEPH,
KIZHAVANA, KADAVANTHARA, ELAMKULAM VILLAGE,
KOCHI-20.

5. JONA JOSEPH, W/O.LATE K.V.JOSEPH,
KIZHAVANA, KADAVANTHARA, ELAMKULAM VILLAGE,
KOCHI-20.

6. IGNATIUS SAMSON S/O. LATE K.V.JOSEPH,
KIZHAVANA, KADAVANTHARA, ELAMKULAM VILLAGE,
KOCHI-20.

7. JESEENDA D/O. LATE K.V.JOSEPH,
KIZHAVANA, KADAVANTHARA, ELAMKULAM VILLAGE,
KOCHI-20.

8. MARY MARGARET D/O. LATE K.V.JOSEPH,
KIZHAVANA, KADAVANTHARA, ELAMKULAM VILLAGE,
KOCHI-20.

9. V.A. ALEXANDER, VALLUVASSERIL HOUSE,
KADAVANTHARA, KOCHI-20.

BY ADV. SRI.S.SREEKUMAR

(.....2)

RESPONDENTS:
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1. STATE OF KERALA, REPRESENTED BY ITS SECRETARY (REVENUE), GOVT.SECRETARIAT, TRIVANDRUM.

2. THE TAHSILDAR, KANAYANNUR TALUK, COCHIN -11.

3. THE VILLAGE OFFICER, ELAMKULAM VILLAGE.

BY GOVERNMENT PLEADER SRI.TEKCHAND. V.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 02/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP.NO.35149 OF 2002 IN OP.NO.20549 OF 2002-U.

DISMISSED.

02-11-2007. **Sd/- T.R.Ramachandran Nair, Judge.**

APPENDIX

Petitioners' Exhibits:-

Ext.P1: **Copy of the building permit dtd.10-12-1999.**

Ext.P2: **Copy of the document No.1200 of 2000 dtd.25-2-2000 in favour of Sudev M.**

Ext.P3: **Copy of the document No.553 of 2000 dtd.21-1-2000 in favour of P.T.Xavier.**

Ext.P4:- **Copy of the details of owners and the number of the title deed and door numbers owned by each persons.**

Ext.P5:- **Copy of notice dtd.12-11-2001 issued to first petitioner.**

Ext.P6:- **Copy of order of assessment dtd.5-6-2002.**

Ext.P7:- **Copy of notice of demand dtd.5-6-2002.**

Respondents' Exhibits:- **Nil.**

(true copy)

P.A. TO JUDGE.

kvs/-

T.R.RAMACHANDRAN NAIR, J.

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O.P.No.20549 of 2002-U.

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Dated this the 2nd day of November, 2007.

J U D G M E N T

Aggrieved by Exts.P6 and P7 orders of assessment under the Building Tax Act and the notice of demand, the petitioners have approached this Court. The 9th petitioner is the owner of 28.500 cents in Survey No.394/4 in Elamkulam Village out of which 4 cents was surrendered for widening Sahodaran Ayyappan Road. The first petitioner is the owner of 3 cents of land in Sy.No.394/5 of the same village which is lying contiguous to the other property. Petitioners 2 to 8 are the owners of 10.335 cents of land in Survey No.394/5. As per building permit Ext.P1 they were allowed to construct a multi storied building in the above property. It is the case of the petitioners that 154 shop rooms/offices were constructed by persons who have entered into separate agreements with the petitioners. Ext.P4 shows their names.

2. Separate Notices were issued to petitioners under the Building Tax Act for enquiry and Ext.P5 is one such notice. Pursuant

to the notices issued the representative of the petitioners appeared before the 2nd respondent and contended that the building belong to several persons and therefore they disputed their liability. It is the case of the petitioners that the 2nd respondent adjourned the hearing for production of documents. They were further informed that the date of hearing will be intimated later. But to the surprise of the petitioners they were served with Ext.P6 assessment order and Ext.P7 notice of demand even without conducting any further enquiry.

3. The petitioners have got a case that the assessment if at all can be made only by issuing notice to the different owners and after hearing them, rather than putting the entire liability on the petitioners. It is pointed out that the procedure adopted is not proper and correct. The procedure to be followed in such cases was laid down by various decisions of this Court especially in *Bavasons Constructions (P) Ltd. v. State of Kerala* (2007(3) KLT 101). The learned Government Pleader points out that if the petitioner has got a case that the owners are to be separately heard, he will have to produce documents and then only the authority will be able to take a decision in the matter. It is also pointed out that to enable the authority to issue notices to all the owners of the

building, a list of those persons will have to be submitted by petitioners.

4. Exts.P6 and P7 are hereby quashed. The 2nd respondent will decide the matter afresh after hearing the petitioners as well as the owners of respective shop rooms/offices. The 2nd respondent will pass orders after allowing sufficient opportunity to all those persons to produce records relied on by them. The points raised should be separately dealth with. Parties should be given time to produce documents and other materials. This shall be done within a period of six months from the date of receipt of a copy of this judgment. The interim order passed by this Court in CMP.No.35149/2002 dated 24/7/2002 will continue to be in force till orders are passed and communicated to the petitioners.

The Original Petition is allowed as above. No costs.

T.R.RAMACHANDRAN NAIR, JUDGE.

Kvs/-